IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1843 of 2006
To
FIRST APPEAL NO. 1845 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SPL.LAQ OFFICER - Appellant
Versus
LALJIBHAI TALSHIBHAI & 1 - Respondents

==========

Appearance :
MR SUDHANSHU S.PATEL, A.G.P. for Appellant.
MR AJ PATEL for Respondent No.1-claimant
MR AD OZA for Respondent : 2,

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 26/06/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE SMT.JUSTICE ABHILASHA KUMARI)

ADMITTED.

Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the respondent No.1-claimant in each appeal. Mr.A.D.Oza, learned counsel, waives service of notice on behalf of the Executive Engineer, Narmada Yojana, Div.No.2/3, Dhandhuka, in each appeal. Having regard to the facts of the case, all the appeals are taken up for final hearing today.

2. The abovenumbered appeals, filed under Section 54 of the Land Acquisition Act, 1894 [“the Act” for short] read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated 30th August, 2002, rendered by the learned 4th Extra Assistant Judge & Special Judge (L.A.R.) Ahmedabad(Rural) at Navrangpura, in L.A.Q.Nos. 2445 of 1996, to 2447 of 1996, by which the Reference Court has awarded to the claimants additional compensation at the rate of Rs. 21.03 ps. per sq.mt.(total Rs.22/- per sq.mt.) for their acquired lands, over and above the compensation

awarded by the Special Land Acquisition Officer at the rate of Rs.0.97 ps. per sq.mt.

3. A proposal was received by the State Government to acquire the lands of village Chharodiya, Taluka : Dhandhuka, District : Ahmedabad, for the public purpose of construction of the Vallabhipur Branch Canal of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that lands of village Chharodiya were likely to be required for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official Gazettee on 22.7.1992. The land-owners, whose lands were sought to be acquired, were served with notices under Section 4 of the Act, pursuant to which they filed their objections against the proposed acquisition. After considering their objections, the report, as contemplated under Section 5A(2) of the Act, was submitted by the Special Land Acquisition Officer to the State Government. On consideration of the said report, the State Government was satisfied that the lands of village Chharodia were needed for the public purpose of construction of Vallabhipur Branch Canal

of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on 6.7.1993. The interested persons were thereafter served with notices under Section 9 of the Act for determining the amount of compensation payable to them. On the basis of the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.0.97 ps. per sq.mt. The claimants were of the opinion that the said offer of compensation made by the Special Land Acquisition Officer was highly insufficient and inadequate. Therefore, they submitted applications in writing, requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (Rural), which were numbered as noted hereinabove. In the References, the claimants claimed compensation at the rate of Rs.25/- per square metre.

4. On behalf of the claimants, witness

Parshottambhai Motibhai, who is one of the claimants, was examined at Exh.20. He claimed that the acquired lands were highly fertile and that each claimant was earning Rs.20,000/- per *bigha* per year from sale of agricultural produces. He also produced the previous award rendered in L.A.R.No.98 of 1986 pertaining to lands of Dhandhuka, at Exh.19. On behalf of the opponents, opponent No.2 examined witness Narendrabhai Narandas Bhavsar at Exh.36. No other witness was examined by the parties.

5. On the appreciation of evidence adduced before it, both oral as well as documentary, the Reference Court was of the opinion that the previous Award rendered in L.A.R.No.98 of 1996 pertaining to Dhandhuka, which was produced by claimant Parshottambhai Motibhai at Exh.19, was a relevant piece of evidence and could be relied upon in order to arrive at a just and reasonable amount of compensation in the present case. Relying upon the said Award, the Reference Court proceeded to enhance the compensation already awarded to the claimants by the Special Land Acquisition Officer, and awarded an

additional compensation of Rs. 21.03 ps. per sq.mt. over and above Rs.0.97 ps. per sq.mt. offered/awarded by the learned Special Land Acquisition Officer, giving rise to the instant appeals.

6. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the appellant as well as Mr.A.J.Patel, learned counsel for the claimants, and has gone through the materials on the record, including copies of depositions of the witnesses examined by the parties.

7. In order to arrive at a fair conclusion, whether the Reference Court has justly awarded additional compensation to the claimants, it would be relevant, at this point, to refer to the depositions of the witnesses examined by the claimants and the opponents, and also to refer to the documentary evidence on the record of the case.

8. The claimants have examined Parshottambhai Motibhai at Exh.20. According to the said witness, who is also one of the claimants, the acquired lands

of village Chharodiya were fertile and even, and had adequate irrigation facilities, such as wells and borewells. He has stated that the claimants were cultivating three crops of bajra, cotton and juvar in a year, and that the claimants were cultivating their lands in a scientific manner. According to him, each claimant was earning net agricultural income of Rs.20,000/- per Bigha, annually. This witness has further stated that, as the Dhandhuka Market Yard is just 6 K.Ms.away from village Chharodiya, the expenses of transportation were very negligible. He has also stated that village Chharodiya is well developed and has all facilities, such as water, light, pakka road etc. He has stated that a Cooperative Society, Government Hospital, Private Hospital, Cooperative Bank, Post Office, Primary School etc. are also available in their village. According to the deposition of this witness, the border of Dhandhuka town is adjoining to this village and earlier also lands of Dhandhuka were acquired for construction of Narmada Canal, and the Court had awarded Rs. 20.00 Ps. per sq.mtr. as additional compensation for the acquired lands from Dhandhuka.

This witness has produced a copy of the Award rendered in L.A.R.No.98 of 1996 pertaining to the lands of Dhandhuka, at Exh.19. This witness was cross-examined, at length, by the learned counsel for the acquiring body, and during his cross-examination, he admitted that he was not having any proof to establish that the acquired lands had irrigation facilities. However, he denied the suggestion that Dhandhuka was 10 Kms. away from village Chharodiya. He also stated that the claimants received compensation with objection, and that in the year 1992, the population of village Chharodiya was around 1200 people.

9. On behalf of the acquiring body, Mr. Narendrabhai Narandas Bhavsar was examined at Exh.36. He has stated that he was serving for the last 19 years as a Deputy Executive Engineer and village Chharodiya was within his jurisdiction. He has stated that Ahmedabad is 117 Kms. away from village Chharodiya and that there are no big industries in that village. According to him, compensation was awarded by the Land Acquisition Officer after

verifying the sale-deeds of the last five years. On cross-examination by the learned counsel for the claimants, this witness has stated that at the time of Award, he was not posted in Vallabhipur Division and he was not having any personal knowledge regarding the Award and procedure followed. He has also admitted that village Chharodiya is 6 Kms away from Dhandhuka and in between both the villages, no other village is situated.

10. We have carefully scrutinised the material on record, including the impugned award. After having appreciated the testimony of the witnesses deposing on behalf of both the claimants and the Acquiring Authority, and after going through the material on record, we are satisfied that the compensation awarded to the claimants by the Reference Court is not on yield basis, but, on the basis of the previous Award pertaining to the lands of Dhandhuka, which are adjoining to village Chharodiya. There is no manner of doubt that village Chharodiya is adjoining to the lands of Dhandhuka being only 3 Kms away. There is no other village situated in between Dhandhuka and

Chharodiya. Therefore, it can be said that village Chharodiya is adjoining to the border of Dhandhuka. The Award in L.A.R.No.98 of 1986, was produced by the claimants at Exh.19. The lands in that case were acquired for the purpose of construction of Narmada Canal, which is the purpose for acquisition in the instant appeals as well. From the testimony of Mr.Parshottambhai Motibhai, it is clear that lands of village Chhorodiya and previously acquired lands of Dhandhuka were similar in fertility and productivity, and possessed similar advantages. This part of the testimony of the said witness has not been shaken in cross-examination. Exh.19 is the Award of Reference Court rendered on 20th October, 1986 in L.A.R.No.98 of 1986. It indicates that agricultural lands of Dhandhuka town were acquired pursuant to publication of notification under Section 4(1) of the Act in the Official Gazette on 2.10.1980. In the present case, the notification under Section 4(1) was published on 22.7.1992. Therefore, there is a difference of 12 years between the two notifications. As per the deposition of the claimant, there is a distance of only 3 Kms. between the acquired lands of Dhandhuka

and village Chharodiya. However, what has weighed with the Reference Court is the fact that Dhandhuka is a Taluka town and is more developed than village Chharodiya. Therefore, after taking into account the comparative development of the two places, as well as time gap of 12 years between the publication of the previous notification under Section 4(1) and the one in the present case, and after adding 10% increase by way of appreciation in price of the acquired lands for each year, the Reference Court has awarded the additional amount of compensation at the rate of Rs.21.03 ps. per sq.mt.

11. It is a well-settled principle of law that the previous Award of a competent Court, which has attained finality, pertaining to lands which are comparable, is a relevant piece of evidence, which can be relied upon to arrive at a just and reasonable amount of compensation in any given case. In the present case no evidence has been produced by the claimants regarding proof of agricultural yield or sale of crops. Therefore, in the absence of such evidence, the award of compensation pertaining to

adjoining lands which were similar in nature, is rightly relied upon in order to assess the amount of compensation payable to the claimants. The principle that the previous Award relating to the lands acquired from an adjoining village and which has become final, can be taken into consideration while determining the market value of the lands acquired has rightly been applied by the Reference Court to the proved facts. Under these circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous Award for the purpose of determination of market value of the lands acquired from village Charodiya.

12. The learned Assistant Government Pleader has not been able to point out any error in the impugned judgment necessitating the interference of this Court in the instant appeals. The appeals, which are devoid of merits, deserve to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as

to costs.

The Registry is directed to draw up the decree in terms of this judgment.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)